



BEST AVAILABLE COPY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Sheri Lynn Baker,	§	GROUP ART UNIT: 1761
John Mampra Mathew,	§	
Renu Mathew, and	§	
Bruce Edward Rogers	§	
	§	
FILED: October 10, 2003	§	EXAMINER: KUHNS, Sarah L.
	§	
INVENTION: Toasted Flavor Additive	§	
Containing Anti-Sticking	§	
Agent	§	
	§	
SERIAL No: 10/683,967	§	ATTY FILE: CFLAY.00197

AFFIDAVIT OF RUSSELL CARL HOSENEY

1. My name is Russell Carl Hosenev. I am over 21 years-of-age, of sound mind, and capable of and authorized to prepare this affidavit. The facts recited in this affidavit are based on my personal knowledge, all of which are true and correct.

2. I am a person having ordinary skill in the art of cereal chemistry, with particular emphasis on cereal structure and function. I am presently a cereal chemist for R&R Research Services. I am also a Professor Emeritus in the field of Grain Science at Kansas State University.

3. I received a Ph.D. degree in Grain Science in 1968 from Kansas State University. I have been employed by R&R Research Services as a cereal chemist from 1997 to the present.

4. Awards and honors I have received include the following: Thomas Burr Osborne memorial Award of the American Association of Cereal Chemists. 1991. Fellow of the American Association of Cereal Chemists. 1991. Irvin E. Youngberg Research Award established by University Regents Distinguished Professor of Chemistry and Pharmacological Chemistry Aya Higuchi and Kansas University Endowment Association. 1991. William F. Geddes Memorial Award of the American Association of Cereal Chemists. 1994. Harald Perten Award, International Association of Cereal Chemists, 1995.

Best Available Copy

BEST AVAILABLE COPY

5. I have over 300 publications including 20 book chapters, a textbook, and 13 US Patents. Recent Publications include: G. Shen and R. C. Hosenev. 1995. Comparisons of Aroma Extracts of Heat-Treated Cereals. *Lebensm.-Wiss. u.-Technol.* 28:208-212; K.E. Petrofsky and R. C. Hosenev. 1995. Starch-gluten interactions in doughs: Rheological properties of starch and gluten from several sources. *Cereal Chem.* 72:53-58; R. A. Miller, E. Graf, and R. C. Hosenev. 1994. Leavened dough pH determination by an improved method. *Jour Food Sci.* 59:1086-1087, 1090; V. Subramanian, R. C. Hosenev, and P. Bramel-Cox. 1994. Shear Thinning Properties of Sorghum and Corn Starches. *Cereal Chem.* 71:272-275; A. A. Akers and R. C. Hosenev. 1994. Water-soluble dextrans from alpha amylase treated bread and their relationship to bread firming. *Cereal Chem.* 71:223-226.

6. I am a member of, and actively involved in, the following professional associations. American Association of Cereal Chemists: Board of Directors 1988-1991; National President 1988-1990; Chairman of Carbohydrate Division – 1987; National Program Chairman – 1980; Served Three Year Term on Editorial Board; Cereal Chemistry Editor in Chief 2001 - Present. Institute of Food Technologists: Served on Editorial Board. American Chemical Society.

7. I have reviewed the above application as originally filed including its specification. I have reviewed the Office Action mailed on January 26, 2005. I have also reviewed the prior art cited by the Examiner in support of the claim rejections detailed in said Office Action, specifically: U.S. Patent No. 4,806,377 granted to Ellis et al. on February 21, 1989 (“Ellis”), “A Dinner Experiment” dated March 28, 2003, “Salmon Patties” dated February 6, 2000, “Food Product Design” dated January 2000, and “Dried Products” dated March 8, 2002. In particular, I have considered Examiner’s contention that:

In regard to claims 1, 4, and 5, “Salmon Patties” discloses a recipe that calls for the grinding of corn chips (page 3) and the addition of the regrind to food. “Salmon Patties” does not disclose the moisture content of less than 2% by weight (column 3,

BEST AVAILABLE COPY

lines 47-50) and an oil content of 2-30% by weight (column 2, lines 34-39). "Salmon Patties" suggests the use of Fritos, but it is expected that any corn chips would suffice and therefore, it would be obvious to use the corn chips of Ellis to make the regrind used in "Salmon Patties." . . .

Claims 17-25 are rejected under 35 USC 103(a) as being unpatentable over "Food Product Design" in view of "Salmon Patties" and Ellis et al. . . . "Food Product Design" further discloses the frying of the toasted flavor pieces after toasting in a triple-pass gas-fired oven, which utilizes both convective heat and infrared radiation (page 3). "Food Product Design" does not disclose the moisture content or oil content of the chips and also does not disclose the grinding of the chips. However, Ellis discloses corn chips and also does not disclose the grinding of the chips. However, Ellis discloses corn chips with a moisture content of less than 2% by weight (column 3, lines 47-50) and an oil content of 2-30% by weight (column 2, lines 34-39) and it would therefore have been obvious to use the method of "Food Product Design" to make chips with low moisture and oil content as taught by Ellis in order to provide chips with reduced fat content. "Salmon Patties" discloses the grinding of corn chips (page 3) for use as filling material in a food product. It therefore would have been obvious to grind corn chips made by the method of "Food Product Design" for use as a coating or filler with food products.

8. As one skilled in the art, I disagree with Examiner's contention that it would be obvious to use the corn chips of Ellis to make the regrind used in "Salmon Patties." A dry toasting, as required by Applicants' invention, is quite different from the deep-fat/oil frying used to prepare commercial corn chips such as Fritos® brand chips and tortilla chips. In fact, commercial corn chips generally comprise roughly 30% by weight oil, which is in stark contrast to the 5%-or-less oil content in Applicants' flavor additive. In addition, virtually all commercial corn chips are salted or otherwise seasoned. It is therefore my belief that the toasted corn flavor of the Applicants' claimed additive would have a different flavor note than that found in commercial corn chips. Thus, one skilled in the art, such as myself, would not have considered toasting corn masa, regrounding the freshly-toasted material without any further processing or addition of oil, and combining it with other products to enhance their toasted flavor. Furthermore, it would not have occurred to me to use the corn chips of Ellis, as Ellis teaches that at least some amount of additional oil be added to baked corn products to avoid organoleptically unacceptable characteristics. Because Ellis teaches that freshly-baked or

BEST AVAILABLE COPY

toasted masa products are potentially bland and undesirable without at least some additional processing, such as adding oil or seasoning, it would not have occurred to me to create a flavor-enhancing additive using a direct, untreated pulverization of toasted masa, as claimed by Applicants.


9. As one skilled in the art, I disagree with Examiner's contention that it would be obvious to use the method of "Food Product Design" to make chips with low moisture and oil content as taught by Ellis in order to provide chips with reduced fat content, and then grind such corn chips as taught by the method of "Food Product Design" for use as a coating or filler with food products. Like Ellis as explained above, "Food Product Design" teaches that to obtain acceptable product, freshly-baked corn products must be given least some amount of additional oil, or at least undergo further processing to ensure that seasoning adheres to their surfaces. Because Ellis and "Food Product Design" both teach that freshly-baked or toasted masa products are potentially bland and undesirable without at least some additional processing, such as adding oil or seasoning, it would not have occurred to me to create a flavor-enhancing additive using a direct, untreated pulverization of toasted masa, as claimed by Applicants.

10. As one skilled in the art, after reading the cited references, I do not see any suggestion to combine the teachings of Ellis with the teachings of "Salmon Patties," "Food Product Design," or any of the other cited references to arrive at Applicants' claimed invention. In fact, one skilled in the art, after reading the cited references, particularly Ellis and "Food Product Design," would conclude that a pulverization of toasted masa would have undesirable organoleptic properties and would therefore not be motivated to use such an unprocessed pulverization as a flavor additive.

11. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are

BEST AVAILABLE COPY

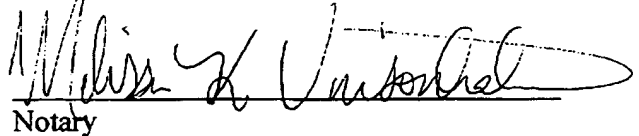
punishable by fine or imprisonment, or both, under Section 101 Title 18 of the United States Code
and that such willful false statements may jeopardize the validity of the patent.



Russell Carl Hosenev
AFFIANT

THE STATE OF KANSAS §
 §
COUNTY OF RILEY §

BEFORE ME, the undersigned authority, on this day personally appeared Russell Carl Hosenev
known to me to be the person whose name is subscribed to the foregoing instrument and, being by me
first duly sworn, upon oath declared that the statements and capacity acted in are true and correct.


Notary

(SEAL)

